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6 Facsimile: (510) 999-7918

7 Attorneys for Defendants

8 COUNTY OF ALAMEDA, DEPUTY ALEXANDER SMITH, DEPUTY RACHEL MITCHELL,
9 DEPUTY DANIEL SABLAR, DEPUTY DANIEL HERRERA, DEPUTY MICHAEL TEVES,
9 DEPUTY MALIK JACKSON, and SERGEANT DEVIN LORIER

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 CHRISTY MILES, individually and as
13 successor-in-interest to decedent, DEVIN
14 WEST,

15 Plaintiff,

16 v.

17 COUNTY OF ALAMEDA; CALIFORNIA;
18 FORENSIC MEDICAL GROUP, INC.; DOE
19 SMITH; DOE MITCHELL; CRISPINO
20 GABRIEL; MARC SOLOPOW; DANIEL
21 SABLAR; BRYAN KISS; DANIEL
22 HERRERA; MICHAEL TEVES; MALIK
23 JACKSON; TERRELL SANTIAGO;
24 KENNETH GEMMELL; DEVIN LORIER;
25 VICTOR GALINDO; TARA ROCKER;
25 MARIA MAGAT; CAROL STEVENSON;
26 MIRA YUNE; ELIAS ABOUJAOUDE;
26 TERESITA PONTEJOS-MURPHY;
26 JENNIFER MCQUADE; and DOES 1 through
26 10, inclusive,

27 Defendants.

Case No. 22-cv-06707-WHO

**DEFENDANT DEPUTY MALIK
JACKSON'S ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT; DEMAND FOR JURY
TRIAL**

1 COMES NOW Defendant DEPUTY MALIK JACKSON (hereinafter “Defendant”), and
2 in answering the Second Amended Complaint (“Complaint”) by Plaintiff CHRISTY MILES
3 (“Plaintiff”) for himself and for no other parties, admits, denies, and alleges as follows:

4 **INTRODUCTION**

5 1. Answering this paragraph, this paragraph asserts no material allegations against
6 Defendant and no response is required. To the extent a response could be required, Defendant
7 denies the allegations therein and denies that Plaintiff is entitled to any relief.

8 **JURISDICTION AND VENUE**

9 2. Defendant admits that this Court has jurisdiction over the claims in this case and
10 that venue is proper. Except as heretofore expressly admitted, Defendant denies generally and
11 specifically each and every allegation contained therein.

12 3. Defendant admits that this Court has jurisdiction over the claims in this case and
13 that venue is proper. Except as heretofore expressly admitted, Defendant denies generally and
14 specifically each and every allegation contained therein.

15 **PARTIES**

16 4. Answering this paragraph, Defendant lacks sufficient information and belief upon
17 which to answer the factual allegations contained therein, and on that basis denies the
18 allegations.

19 5. Answering this paragraph, Defendant lacks sufficient information and belief upon
20 which to answer the factual allegations contained therein, and on that basis denies the
21 allegations.

22 6. Answering this paragraph, Defendant admits that the County of Alameda is a
23 public entity. As to the remaining allegations, Defendant lacks sufficient information and belief
24 upon which to answer the factual allegations contained therein, and on that basis denies the
25 allegations.

26 7. Answering this paragraph, Defendant lacks information and belief sufficient to
27 either admit or deny the allegations. Except as heretofore expressly admitted or otherwise
28 denied, Defendant denies generally and specifically each and every allegation contained therein.

1 8. Answering this paragraph, Defendant lacks information and belief sufficient to
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4 18. Answering this paragraph, Defendant lacks information and belief sufficient to
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6 denied, Defendant denies generally and specifically each and every allegation contained therein.

7 19. Answering this paragraph, Defendant admits that he was a Deputy with the
8 County of Alameda's Sheriff's Department at all relevant times. As to all other allegations in
9 this paragraph, Defendant lacks information and belief sufficient to either admit or deny the
10 allegations. Except as heretofore expressly admitted or otherwise denied, Defendant denies
11 generally and specifically each and every allegation contained therein.

12 20. Answering this paragraph, Defendant lacks information and belief sufficient to
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28 ///

FACTS COMMON TO ALL CLAIMS FOR RELIEF

34. Answering this paragraph, which incorporates by reference the allegations of previous paragraphs of the pleading, Defendant to the same extent incorporates by reference the answers provided herein to those paragraphs.

35. Answering this paragraph, Defendant lacks information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

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DAMAGES

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141. Answering this paragraph, Defendant lacks information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

142. Answering this paragraph, Defendant admits that the law speaks for itself. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

FIRST CLAIM FOR RELIEF

Interference with Familial Relationship, Due Process – Violation of the Fourteenth Amendment (42 U.S.C. §1983)

(Wrongful Death) (By Plaintiff against Defendants SMITH, MITCHELL, GABRIEL, SOLOPOW, SABLAR, KISS, HERRERA, TEVES, JACKSON, SANTIAGO, GEMMELL, LORIER, GALINDO, ROCKER, MAGAT, STEVENSON, YUNE, ABOUJAOUDE, PONTEJOS-MURPHY, MCQUADE, and DOES 1 through 10)

143. Answering this paragraph, which incorporates by reference the allegations of the previous paragraphs of the pleading, Defendant to the same extent incorporates by reference the answers provided herein to those paragraphs.

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SECOND CLAIM FOR RELIEF

Failure to Protect – Violation of the Eighth Amendment (42 U.S.C. §1983)

(Survival) (By Plaintiff against Defendants SMITH, MITCHELL, GABRIEL, SOLOPOW, SABLAM, KISS, HERRERA, TEVES, JACKSON, SANTIAGO, GEMMELL, LORIER, GALINDO, ROCKER, MAGAT, STEVENSON, YUNE, ABOUJAOUDE, PONTEJOS-MURPHY, MCQUADE, and DOES 1-10)

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17 165. Answering this paragraph, Defendant denies generally and specifically each and
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21 167. Answering this paragraph, this paragraph asserts no material allegations against
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24 168. Answering this paragraph, this paragraph asserts no material allegations against
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27 ///

28 ///

THIRD CLAIM FOR RELIEF

Denial of Medical Care (43 U.S.C. §1983)

(Survival) (By Plaintiff against Defendants SMITH, MITCHELL, GABRIEL, SOLOPOW, SABLAN, KISS, HERRERA, TEVES, JACKSON, SANTIAGO, GEMMELL, LORIER, GALINDO, ROCKER, MAGAT, STEVENSON, YUNE, ABOUJAOUDE, PONTEJOS-MURPHY, MCQUADE, and DOES 1-10)

169. Answering this paragraph, which incorporates by reference the allegations of the previous paragraphs of the pleading, Defendant to the same extent incorporates by reference the answers provided herein to those paragraphs.

170. Answering this paragraph, Defendant admits that the law speaks for itself. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

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173. Answering this paragraph, Defendant denies generally and specifically each and every allegation contained therein.

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111

1 177. Answering this paragraph, this paragraph asserts no material allegations against
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FOURTH CLAIM FOR RELIEF

Supervisor Liability (42 U.S.C. § 1983)

(Survival) (By Plaintiff against Defendants GEMMELL, MAGAT, and Supervisor DOES)

201. Answering this paragraph, which incorporates by reference the allegations of the previous paragraphs of the pleading, Defendant to the same extent incorporates by reference the answers provided herein to those paragraphs.

202. Answering this paragraph, Defendant admits that the law speaks for itself. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

203. Answering this paragraph, Defendant lacks information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

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214. Answering this paragraph, this paragraph asserts no material allegations against Defendant and no response is required. To the extent a response could be required, Defendant denies the allegations therein and denies that Plaintiff is entitled to any relief.

FIFTH CLAIM FOR RELIEF

Municipal Liability – Failure to Train (42 U.S.C §1983)

(Survival) (By Plaintiff against Defendant COUNTY)

215. Answering this paragraph, which incorporates by reference the allegations of the previous paragraphs of the pleading, Defendant to the same extent incorporates by reference the answers provided herein to those paragraphs.

216. Answering this paragraph, Defendant lacks information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

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SIXTH CLAIM FOR RELIEF

Municipal Liability – Unconstitutional Custom, Practice, Policy (42 U.S.C §1983)

(Survival) (By Decedent WEST through Plaintiff against Defendant COUNTY)

226. Answering this paragraph, which incorporates by reference the allegations of the previous paragraphs of the pleading, Defendant to the same extent incorporates by reference the answers provided herein to those paragraphs.

227. Answering this paragraph, Defendant lacks information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

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SEVENTH CLAIM FOR RELIEF

Americans with Disabilities Act – Reasonable Accommodation

(Survival) (By Plaintiff against Defendant COUNTY)

241. Answering this paragraph, which incorporates by reference the allegations of the previous paragraphs of the pleading, Defendant to the same extent incorporates by reference the answers provided herein to those paragraphs.

242. Answering this paragraph, Defendant admits that the law speaks for itself. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

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25 264. Answering this paragraph, Defendant denies generally and specifically each and
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28 ///

EIGHTH CLAIM FOR RELIEF

Negligence

(Wrongful Death and Survival) (By Plaintiff against Defendants SMITH, MITCHELL, GABRIEL, SOLOPOW, SABLAR, KISS, HERRERA, TEVES, JACKSON, SANTIAGO, GEMMELL, LORIER, GALINDO, ROCKER, MAGAT, STEVENSON, YUNE, ABOUJAOUDE, PONTEJOS-MURPHY, MCQUADE, and DOES 1-10 directly, and Defendants COUNTY and CFMG, vicariously)

265. Answering this paragraph, which incorporates by reference the allegations of the previous paragraphs of the pleading, Defendant to the same extent incorporates by reference the answers provided herein to those paragraphs.

266. Answering this paragraph, Defendant lacks information and belief sufficient to either admit or deny the allegations. Except as heretofore expressly admitted or otherwise denied, Defendant denies generally and specifically each and every allegation contained therein.

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NINTH CLAIM FOR RELIEF

Violation of the Bane Act (Civil Code §52.1)

(By Plaintiff against Defendants)

274. Answering this paragraph, which incorporates by reference the allegations of the previous paragraphs of the pleading, Defendant to the same extent incorporates by reference the answers provided herein to those paragraphs.

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(PLAINTIFF'S) PRAYER FOR RELIEF

In answering Plaintiff's Prayer for Relief, Defendant denies Plaintiff is entitled to any relief, an injunction, damages, costs, interest, or attorneys' fees in any sum or sums or at all.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's Complaint fails to state a cause of action against this answering Defendant.

SECOND AFFIRMATIVE DEFENSE

As to the federal claims and theories of recovery, this answering Defendant is protected from liability under the doctrine of qualified immunity, because Defendant's conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

THIRD AFFIRMATIVE DEFENSE

The action should be abated in that all of the heirs of decedent have not been joined as parties.

FOURTH AFFIRMATIVE DEFENSE

The damages alleged were directly and proximately caused and contributed to by the negligence of Plaintiff, and the extent of damages sustained, if any, should be reduced in proportion to the amount of said negligence.

FIFTH AFFIRMATIVE DEFENSE

The damages alleged were directly and proximately caused and contributed to by the negligence of other persons, and the extent of damages sustained, if any, should be reduced in proportion to the amount of said negligence.

SIXTH AFFIRMATIVE DEFENSE

Decedent had actual knowledge of the condition and particular danger alleged, knew and understood the degree of the risk involved, and voluntarily assumed such risk.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or part due to Plaintiff and/or decedent's failure to exhaust the available administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE

Defendant County of Alameda and all Defendants sued in their official capacities are immune from the imposition of punitive damages.

NINTH AFFIRMATIVE DEFENSE

Neither a public entity, nor a public employee, is liable for his/her act or omission, exercising due care, in the execution or enforcement of any law.

TENTH AFFIRMATIVE DEFENSE

Wrongful act of decedent or others. Any injury or damage suffered was due to or caused solely by reason of decedent or other's wrongful acts and conduct, and not by reason of any wrongful acts or omissions of Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

Apportionment of Fault: If it is found that any Defendant is legally responsible for the damages, if any, which Defendant specifically denies, then such damages were proximately caused by or contributed to by Plaintiff's decedent or others, whether served or not, and it is necessary that the proportionate degree of fault of every such person be determined and prorated by the trier of fact, and that any judgment which might be rendered against any Defendant be reduced by that percentage of fault to be found to exist of decedent or others and causative fault, whether sued herein or not.

TWELFTH AFFIRMATIVE DEFENSE

Superseding Cause: Any alleged acts or omissions by Defendant and or Defendant County of Alameda's agents, officers, and/or employees were superseded by the negligence or causative fault of Plaintiff's decedent or others, whether sued herein or not, whose negligence or

1 causative fault intervened and was the sole cause of any detriment to Plaintiff's decedent as
2 alleged in the Complaint.

3 **THIRTEENTH AFFIRMATIVE DEFENSE**

4 Defendant alleges that as a public entity it is immune from liability pursuant to the
5 provisions of Government Code sections 815, 815(a), 815.2(a), 815.2(b), and 815.6.

6 **FOURTEENTH AFFIRMATIVE DEFENSE**

7 Defendant is immune from suit herein under applicable California immunity statutes,
8 including but not limited to, California Government Code sections 818, 818.2, 818.4, 818.8,
9 820.2, 820.4, 820.6, 820.8, 821, 821.4, 821.6, 821.8, 822.2, 830, 830.4, 831, 831.2, 831.4, 831.7,
10 840, 840.2, 840.4, 844.6, 845, 845.2, 845.6, 845.8, 846, 855.6, 855.8, 856, 856.4, 945.4, 945.6,
11 and 950.6.

12 **FIFTEENTH AFFIRMATIVE DEFENSE**

13 Defendant alleges that Defendant is not liable for the authorized exercise of discretion of
14 public employees in determining an inmate's classification, housing, cell assignment, and other
15 terms and conditions of confinement, including pursuant to California Government Code
16 sections 815.2(b), 820.2, 845, 845.2, 844.6, and 856.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 Defendant alleges that to the extent the acts complained of were within the discretion of
19 public employees, Defendant is immune from liability pursuant to the provisions of Government
20 Code sections 820.2 and 815.2(b).

21 **SEVENTEENTH AFFIRMATIVE DEFENSE**

22 Defendant alleges that Plaintiff's claims are barred, in whole or in part, by res judicata,
23 collateral estoppel, claim preclusion, issue preclusion and/or the improper splitting of claims in a
24 previous action from which such doctrines arise.

25 **EIGHTEENTH AFFIRMATIVE DEFENSE**

26 Defendant denies that it breached any duty allegedly owed by Defendant to Plaintiff or
27 decedent.

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NINETEENTH AFFIRMATIVE DEFENSE

Defendant alleges it is not liable for the negligent, reckless, intentional, or criminal acts of an inmate, an injury proximately caused by another prisoner, or any injury to a prisoner proximately caused by third-party conduct, including pursuant to California Government Code sections 820.8 and 844.6.

TWENTIETH AFFIRMATIVE DEFENSE

Defendant alleges that Defendant has no duty to protect against the negligent, reckless, intentional, or criminal acts of an inmate, an injury proximately caused by another prisoner, or any injury to a prisoner proximately caused by third-party conduct, including pursuant to California Government Code sections 820.8, 844.6, 845, and 845.2.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant alleges that Defendant has no duty, and is immune from liability, for any alleged failure to provide services, or sufficient services, that a police department would perform, including police protection services, prison or jail services, penal or correctional facility services, or any alleged insufficiency in equipment, personnel or facilities therein, including pursuant to California Government Code sections 845 and 845.2.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's decedent's actions are barred to the extent that Plaintiff has failed to comply with Government Code section 905.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiff's Complaint exceeds the scope of their claim, both in respect to theories of liability asserted and to injuries and damages claimed. It is therefore barred pursuant to Government Code sections 900, *et seq.* and Code of Civil Procedure section 313.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Defendant alleges that Defendant is immune from liability for any injury or loss to Plaintiff from any allegedly inadequate or delayed medical care, including mental healthcare, that decedent could have received while incarcerated, or from any injury sustained while incarcerated, including pursuant to California Government Code sections 845.6 and 844.6.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Defendant alleges that Defendant is immune from liability for any injury or loss to Plaintiff from any alleged failure to make an adequate physical or mental examination of any person, including pursuant to California Government Code sections 845.6, 855.6, and 855.8.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Defendant alleges that Defendant is immune from liability for any injury or loss to Plaintiff from any alleged failure to identify, prescribe for or treat any alleged mental illness by decedent, including during the intake process, including pursuant to California Government Code sections 845.6, 855.6, and 855.8.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendant alleges that Defendant is immune from liability for any injury or loss to Plaintiff's decedent from any injury allegedly sustained from the confinement, terms and conditions of confinement, all determinations involved in the process of commitment, and any determination to grant or refuse a release or leave of absence from confinement for any inmate with mental illness, including for admission to a public medical facility, including pursuant to California Government Code sections 820.2, 820.8, 845.6, 855.6, 855.8, 856, and 856.4 and/or Welfare and Institutions Code section 5278.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendant alleges that Defendant is immune from liability for any injury or loss to Plaintiff from any third-party acts, including the acts of independent contractors, including pursuant to California Government Code sections 815, 815.4, 820.8, and 844.6.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Because the Complaint is couched in conclusory terms, Defendant cannot fully anticipate all affirmative defenses that may be applicable to this matter. Accordingly, the right to assert additional affirmative defenses, if and to the extent such affirmative defenses are applicable, is hereby reserved.

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DEMAND FOR JURY TRIAL

Defendant DEPUTY MALIK JACKSON demands a trial by jury in this matter.

WHEREFORE, Defendant prays that:

1. Defendant be dismissed;
2. Plaintiff take nothing by this proceeding;
3. Defendant recovers his reasonable attorneys' fees and costs; and
4. The Court awards such other relief as it considers proper.

Dated: March 1, 2024

Respectfully submitted,

ORBACH HUFF & HENDERSON LLP

By: /s/ Kevin E. Gilbert

Kevin E. Gilbert

Nicholas D. Fine

Attorneys for Defendants

COUNTY OF ALAMEDA, DEPUTY ALEXANDER SMITH, DEPUTY RACHEL MITCHELL, DEPUTY DANIEL SABLON, DEPUTY DANIEL HERRERA, DEPUTY MICHAEL TEVES, DEPUTY MALIK JACKSON, and SERGEANT DEVIN LORIER